IN THE IOWA DISTRICT COURT FOR ADAIR COUNTY

JAMES NAUMANN, Petitioner, vs. IOWA PROPERTY ASSESSMENT APPEAL BOARD, Respondent.	CASE NO. CVCV005092 RULING ON PETITION FOR JUDICIAL REVIEW

The above-captioned matter came before the Court for hearing on November 24, 2008. Petitioner was represented by Mark Smith. Respondent was represented by Curtis Swain. Intervenor, Adair County Board of Review, was represented by Michael Maynes. Following oral argument and upon review of the court file, administrative record, and applicable law, the Court enters the following:

STATEMENT OF THE CASE

James Naumann (Naumann) appealed a January 1, 2007, assessment of thirteen of his real estate parcels by the Adair County Assessor and appeared before the Board of Review for Adair County on May 14, 2007. On May 15, 2007, the Board of Review notified Naumann that the assessments would remain unchanged. Naumann filed appeals with the Iowa Property Assessment Appeal Board (Board) on May 29, 2007, and appeared before the Board on November 20, 2007. On December 13, 2007, the Board affirmed the decision of the Adair County Board of Review. On December 24, 2007, Naumann filed a Petition for Judicial Review with this court. This court allowed the Adair County Board of Review to intervene in the matter on September 8, 2008.

FINDINGS OF FACT

The decision from which Naumann appeals was based upon the following facts:

Naumann owns several parcels of land in Adair County and Madison County, Iowa. Thirteen parcels in Union Township in Adair County were classified as agricultural land with an assessed value of $242,891. Naumann asserted an error in the assessment because the value that the parcels were assessed at was more than authorized by law. The local Board of Review notified Naumann that his assessments would remain unchanged because there was insufficient evidence to prove that the assessments were excessive. Naumann then appealed to the Board.

Naumann performed his own calculations and determined that there was an average difference of 36% in land value between his parcels of land in Adair County and his parcels of land in Madison County. He argued that Iowa Code section 441.21(1)(d) (2007) prohibits a difference of more than 5% in actual values of similar, closely adjacent property in adjoining assessing jurisdictions in the state. He introduced exhibits, including a land comparison chart and the calculations he used to show the errors. He also testified that his Adair County land is not farmable except for raising hay.

The Board provided three witnesses who testified to the procedures used in determining the assessment of agricultural real estate. Cary Halfpop of the Iowa Department of Revenue explained that agricultural assessments are figured by the Property Tax Division of the Department of Revenue and are based on productivity and net earning capacity under Iowa Administrative Code 701-71.12 (2007) and Iowa Code 441.21(1)(d). He testified that each county gets a total value which is figured by arriving at net income per acre. The net income is then divided by a capitalization rate to get the

per-acre value. That figure is then multiplied by the number of taxable agriculture acres reported on the assessor's abstract to get a total agriculture value for the county. The assessor then subtracts the value of any structures, and the remaining land value is divided by the total number of Corn Suitability Rating (CSR) points in the county. The resulting amount is the dollar price per CSR point that is applied across the county.

JoAnn Walser, the Madison County Assessor, testified that in October 2007 the county received an equalization order from the Department of Revenue. The order was received because the county was below the prescribed value and was effective back to January 1, 2007. Ken Huddelson, the Adair County Assessor, testified that the differences between land values in Adair and Madison counties are a result of the differences in CSR index numbers. CSR index numbers factor in the soil type, erosion factor, and the slope of the land. He also testified that there can be a significant difference in value per CSR units among counties.

STANDARD OF REVIEW

On judicial review of agency action, the district court functions in an appellate capacity to apply the standards of Iowa Code section 17A.19. *Iowa Planners Network v. Iowa State Commerce Comm'n*, 373 N.W.2d 106, 108 (Iowa 1985). The court shall reverse, modify, or grant other appropriate relief from agency action if the agency action was based upon a determination of fact clearly vested by a provision of law in the discretion of the agency that is not supported by substantial evidence in the record before the court when that record is viewed as a whole. Iowa Code section 17A.19(10)(f). "'Substantial evidence' means the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue

when the consequences resulting from the establishment of that fact are understood to be serious and of great importance." Iowa Code section 17A.19(10)(f)(1).

> Evidence is substantial when a reasonable person could accept it as adequate to reach the same findings. ... Conversely, evidence is not insubstantial merely because it would have supported contrary inferences. ... The ultimate question is not whether the evidence supports a different finding but whether the evidence supports the findings actually made.

Reed v. Iowa Dept. of Transp., 478 N.W.2d 844, 846 (Iowa 1991).

The Court shall also reverse, modify, or grant other appropriate relief from agency action if such action was based upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency. Iowa Code section 17A.19(10)(c). The Court should not give any deference to the view of the agency with respect to particular matters that have not been vested by a provision of law in the discretion of the agency. Iowa Code section 17A.19(11)(b). However, appropriate deference shall be given when the contrary is true. Iowa Code section 17A.19(11)(c). Where the interpretation of a particular provision of law has been clearly vested in the discretion of the agency, the agency's interpretation may only be reversed if it is irrational, illogical, or wholly unjustifiable. Iowa Code section 17A.19(10)(l). The agency's findings are binding on appeal unless a contrary result is compelled as a matter of law. *Ward v. Iowa Dept. of Transp.*, 304 N.W.2d 236, 238 (Iowa 1981).

A reviewing court must also reverse, modify, or grant other appropriate relief when the agency's decision is "[b]ased upon an irrational, illogical, or wholly unjustifiable application of law to fact that has clearly been vested by a provision of law

in the discretion of the agency." Iowa Code section 17A.19(10)(m). In this matter the agency has been entrusted with the responsibility of applying the law to the facts.

DISCUSSION

I. *Analysis*

A. *Introduction of new evidence.*

Naumann introduced into evidence in his brief and oral argument an article written by Professor Gerald Miller of Iowa State University entitled "Corn Suitability Ratings-An Index to Soil Productivity." He argues that Iowa Code section 441.38(1) allows the introduction of the evidence. Additionally, an order filed September 8, 2008, held that Naumann was allowed to admit the article as evidence. The Board and County object to this evidence and argue that Iowa Code section 441.39 prohibits its admission.

Iowa Code section 441.38(1) states:

> Appeals may be taken from the action of the property assessment appeal board to the district court of the county where the property which is the subject of the appeal is located … . No new grounds in addition to those set out in the protest to the local board of review as provided in section 441.37, or in addition to those set out in the appeal to the property assessment appeal board, if applicable, can be pleaded, *but additional evidence to sustain those grounds may be introduced.*

Iowa Code section 441.38(1)(emphasis added). Iowa Code section 441.39 states that "[i]f the appeal is from a decision of the property assessment appeal board, the court's review shall be limited to the correction of errors at law." These two sections are irreconcilable because if a review is limited to the correction of errors at law, then the court may not consider new evidence. Iowa Code section 4.8 addresses irreconcilable statutes and states that:

> If statutes enacted at the same or different sessions of the legislature are irreconcilable, the statute latest in date of enactment by the general

> assembly prevails. If provisions of the same Act are irreconcilable, the provision listed last in the Act prevails.

Iowa Code sections 441.38(1) and 441.39 were both amended by House File 868 in the 2005 legislative session, and section 441.39 was listed last in the Act. Applying Iowa Code section 4.8, section 441.39 is applicable here. In spite of the order of September 8, 2008, and Iowa Code section 441.38(1), Iowa Code section 441.39 controls, and the evidence shall not be considered. This Court's review will be limited to correction of errors at law.

B. Did the Board err in deciding that Naumann failed to show by a preponderance of the evidence that the productivity value of the parcels was calculated incorrectly, that the assessed value of the parcels was more than authorized by law, or that there was an error in the assessment?

Naumann asserts that the Board failed to follow Iowa Code section 441.21(1)(d) in handing down its decision. Iowa Code section 441.21(1)(d) provides that:

> Actual value of property in one assessing jurisdiction shall be equalized as compared with actual value of property in an adjoining assessing jurisdiction. If a variation of five percent or more exists between the actual values of similar, closely adjacent property in adjoining assessing jurisdictions in Iowa, the assessors thereof shall determine whether adequate reasons exist for such variation. If no such reasons exist, the assessors shall make adjustments in such actual values to reduce the variation to five percent or less.

The next section, 441.21(1)(e), provides that the "value of agricultural property shall be determined on the basis of productivity and net earning capacity of the property ..." Iowa Code section 441.21(1)(e) also states that "[a]ny formula or method employed to

determine productivity and net earning capacity of property shall be adopted in full by rule." At the Board hearing Mr. Halfpop of the Department of Revenue testified that the Department did adopt such a rule and it is found in the Iowa Administrative Code 701-71.12. Further relevant to determining the value of agricultural land is Iowa Code section 441.21(1)(f) which states that where counties have completed modern soil surveys since January 1, 1949, "the assessor shall place emphasis upon the results of the survey in spreading the valuation among individual parcels of such agricultural property."

Naumann argues that the calculations that he performed demonstrate that there is more than a five percent difference in similar, closely adjacent property in adjoining assessment jurisdictions. However, this method is not the method that assessors are required by Iowa law to use in making assessments of agricultural land. The Board correctly pointed out that the calculations to be used by county assessors to assess agricultural land are found in the administrative rules, as required in Iowa Code section 441.21(1)(e).

After reviewing the record as a whole, this Court agrees that the record shows that the Board's decision was supported by substantial evidence. The testimony of two county assessors and an employee of the Department of Revenue weighed heavily in the Board's favor. The Board found that the Adair County Assessor used the proper method authorized by law for calculating the assessments. Further, the Board correctly applied the law to the facts.

The Board's application of the law can only be reversed if it is determined that such application of law is "irrational, illogical, or wholly unjustifiable." Iowa Code section 17A.19(10)(m). There is nothing in the record to indicate that the Board's

application was irrational, illogical, or unjustifiable. The mere fact that Naumann used a method of assessing his land which the law does not allow county assessors to use does not prove that the Board's application was irrational, illogical, or wholly unjustifiable.

C. Conclusion

The Board's decision that Naumann did not meet his burden of proving that his land was assessed at a value higher than that authorized by law was supported by substantial evidence. A final agency decision "should be affirmed by the district court ... when there is no error of law and the decision is supported by substantial evidence in the record as a whole." *Aalbers v. Iowa Dept. of Job Service,* 431 N.W.2d 330, 334 (Iowa 1988). Therefore, the decision by the Iowa Property Assessment Appeal Board is affirmed.

ORDER

IT IS THE ORDER OF THE COURT that the Ruling on Appeal of the Iowa Property Assessment Appeal Board is hereby **AFFIRMED.**

SO ORDERED this 30th day of December, 2008.

DAVID L. CHRISTENSEN
Judge, Fifth Judicial District of Iowa

Clerk, please file original
and mail copies to: